

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:04-00136-001

GARY SMITH, SR.

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion for reconsideration of the sentence imposed on December 15, 2011. (Doc. # 69). For reasons expressed more fully below, that motion is DENIED.

On December 15, 2011, a revocation hearing in this matter was held. At the conclusion of that hearing, the court ordered defendant's term of supervised release revoked and sentenced him to a term of incarceration of twelve (12) months and a four-year term of supervised release. The court also revoked defendant's bond and remanded him to the custody of the United States Marshals Service. The court indicated that it might reconsider the issue of bond if defendant made an appropriate motion.

Instead, defendant has filed the instant motion in which he asks the court to reconsider the sentence imposed and impose a sentence that does not include a term of incarceration. The United States objects to defendant's motion.

Under Federal Rule of Criminal Procedure 35(a), within 14 days of sentencing, a "court may correct a sentence that resulted from arithmetical, technical, or other clear error." Defendant

argues that the sentence imposed fails to reflect that he is a caretaker for his medically fragile mother and that he is an employed, contributing member of society. The court disagrees.

At sentencing, the court fully considered the statements of defendant and his counsel regarding the situation with his mother, as well as the fact of his employment. The court also considered defendant's history and circumstances, including his conduct while on supervised release. To that end, the court imposed a sentence that it believed was sufficient, but not greater than necessary, to satisfy the statutory objectives of sentencing, i.e., to protect the public, provide an adequate deterrent and reflect the seriousness of the violations committed by defendant. In doing so, the court imposed a sentence at the bottom of the guideline range which it felt was necessary to punish the defendant and deter further criminal conduct. Given that there was no clear error in the sentence imposed, the motion to reconsider is DENIED.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to defendant, counsel of record, the Probation Office of this court, and the United States Marshal for the Southern District of West Virginia.

It is SO ORDERED this 29th day of December, 2011.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Senior United States District Judge